No. 11,952

IN THE

United States Court of Appeals

For the Ninth Circuit

WAIALUA AGRICULTURAL COMPANY, LIMITED (a corporation),
Appellant,

vs.

CIRACO MANEJA, et al.,
Appellees,

and

CIRACO MANEJA, et al.,
Appellants,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED (a corporation),
Appellee.

On Appeal from the District Court of the United States for the District of Hawaii.

BRIEF FOR APPELLEES AND CROSS-APPELLANTS.

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INTRODUCTION.

We adopt the statement in the brief for appellant and cross-appellee dealing with the nature of the action here involved, the jurisdiction of the Court, and the statutory provisions involved. Waialua

Agricultural Company, Limited, the appellant and cross-appellee in this action, will be referred to in this brief as "the appellant". Appellant's employees, the appellees and cross-appellants in this action, will be referred to herein as "the appellees".

STATEMENT OF THE CASE.

The appellees accept appellant's "Statement of the Case" as set forth in its brief at pages 3 to 11, without however accepting or endorsing the emphasis and significance placed by appellant on certain of the facts of the case.

QUESTIONS PRESENTED.

1. Are any of the appellees, or employees similarly situated, "employed in agriculture" as the term "agriculture" is defined in § 3(f) of the Fair Labor Standards Act (hereinafter referred to as "the Act"), and therefore exempt from both the minimum wage and overtime provisions of the Act as provided in § 13(a)(6) thereof?

2. If any or all of said employees are not so exempt, are any or all of them exempt from the overtime provisions of the Act, by virtue of § 7(c) thereof which provides that "in the case of an employer engaged * * * in the processing of * * * sugarcane * * * into sugar (but not refined sugar) or into syrup", the overtime provisions of the Act "shall not apply to his employees in any place of employment where he is so engaged"?

3. If during the same workweek any appellee, or any other employee similarly situated, engaged in an activity exempt under § 13(a)(6) or § 7(c) of the Act and also engaged during such workweek in an activity not so exempt, is he nonetheless exempt for that workweek from the overtime provisions of the Act by virtue of § 13(a)(6) or § 7(c), or both?

4. Are any of the appellees, or those similarly situated, when they are engaged in any one week exclusively in the repair and maintenance of plantation houses and related domestic facilities, "engaged in commerce or in the production of goods for commerce" as the terms "commerce" and "produced" are defined in §§ 3(b) and 3(j) of the Act?

SPECIFICATION OF ERRORS.

The District Court erred as follows:

1. In holding that appellant is entitled, pursuant to § 13(a)(6) of the Fair Labor Standards Act, to exemption from § 7(a) of said Act in respect of certain activities performed in or about the cane fields of appellant, which are not performed directly, proximately and immediately in and upon the actual production of sugar cane.

2. In holding that appellant is entitled, pursuant to § 7(c) of the Fair Labor Standards Act, to exemption from § 7(a) of the Act in respect of certain activities performed in or about the mill building of appellant, which are not performed directly, proximately and immediately in and upon the transforming of sugar cane into refined sugar.

CONTENTION OF THE PARTIES.

Appellees contend:

A. That none of the appellant's employees who are parties to this action, nor any other employees of appellant similarly situated, are exempt from the provisions of the Act by virtue of § 13(a)(6) or § 7(c), save as follows:

(1) Such employees are exempt under § 13(a)(6) of the Act during workweeks when they are engaged exclusively in work performed directly, proximately, and immediately in and upon the actual cultivation and tillage of the soil, and the cultivation, growing, and harvesting of sugar cane. In this connection appellees contend that harvesting of sugar cane is completed immediately upon the severance of the sugar cane from the earth so that where sugar cane is severed from the soil and thereafter placed into rail cars, the placing of the cane into rail cars is not harvesting and is not exempt.

(2) Such employees are exempt under § 7(c) of the Act only during those workweeks when they are engaged exclusively in tasks and duties performed directly, immediately, and exclusively in and upon the transforming of sugar cane into raw sugar. In this connection, appellees contend that the processing of sugar cane is commenced with the washing operation at the mill and is completed when the crystals of sugar are removed from machines and placed in either bins or bags. Hence tasks performed by said employees prior to the washing operation, as well as after the raw sugar is placed in the bins or bags, are

not exempt. Appellees further claim that none of said employees while working in and about appellant's mill during the off-season referred to in the Stipulation of Facts (R. 210-212) are exempt under § 7(c), nor are they exempt under said section during workweeks during the grinding season when they perform any work in and about the mill during the 24-hour shutdown period referred to in the Stipulation of Facts. (R. 183-184.)

B. That all of the appellees, and all other employees of the appellant who are similarly situated, including those engaged in the maintenance and repair of appellant's dwelling houses and other facilities, are "engaged in commerce or in the production of goods for commerce" within the meaning of § 7(a) of the Act.

ARGUMENT.

I. THE FACTS.

The stipulation of facts (R. 129-256) describes in detail the operations of the appellant corporation and the activities of the appellees in relation thereto. Appellant's brief on file herein summarizes this document and no purpose therefore would be served by a duplication of this summary.

However, in order that the important questions presented in this case may be properly determined, it is essential that the Court have before it (1) a clear picture, not only of the operations of the particular corporation appellant here involved, but of

the entire sugar-producing industry in the Hawaiian Islands; (2) the relation of such industry to world production of sugar; and (3) the differences between the manner in which the industry is organized in the Territory of Hawaii and the organization thereof in the continental United States and Puerto Rico. For this reason, we summarize and quote briefly from Appellees' Exhibit No. 1 in evidence (Bulletin No. 687, United States Department of Labor, Bureau of Labor Statistics, entitled "Labor in the Territory of Hawaii"). We also refer on one occasion to an official government pamphlet entitled "The Economy of Hawaii in 1947, Bulletin No. 926", issued by the U. S. Department of Labor, copies of which have been furnished the Court by appellant. Brief reference is also made to certain portions of the stipulation of facts (R. 129-256) and the complaint (R. 3-20) which confirm the statements made in the official pamphlets referred to above.

1. The growing, harvesting, and processing of sugar cane in the Hawaiian Islands is not seasonal in nature, but is a day-and-night, year-around operation, except for the three months so-called "off-season" and the weekly 24-hour shut-down period.

This is admitted on page 65 of appellant's brief wherein it is stated: "Nor is the industry in Hawaii, which is engaged in processing sugarcane into raw sugar, in fact a seasonal one."

On page 57 of Bulletin No. 687, we find the following statement:

> "Employment in the production of sugar in Hawaii continues throughout the year. In this

respect it is more like employment in *manufacturing operations,* with moderate seasonal fluctuations, than like agricultural occupations in the United States." (Emphasis added.)

Paragraph 20 of the stipulation of facts (R. 183) states as follows:

"Production in the mill operations is keyed basically to a six-day week with continuous and around-the-clock operations, the mill stopping the grinding of cane at 2:00 p.m. on Saturdays and starting up at 2:00 p. m. on Sundays. The 24-hour day is divided into three 8-hour shifts running from 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m., and 10:00 p.m. to 6:00 a.m."

The harvesting of sugar cane goes on day and night during the processing season. (R. 156-157.)

2. The production of sugar in the Hawaiian Islands is a highly centralized, mechanized, integrated and scientifically controlled operation. It is in fact a "factory" operation and not a "farm" operation.

We quote from pages 13 and 14 of Bulletin No. 687:

"* * * life on all of the plantations follows a substantially similar pattern. This is the result of several generations of experimentation. Due to the coordinating influence of the Hawaiian Sugar Planters' Association, whenever a good workable method was found by one plantation, it was quickly adopted by all the others, thus gradually developing a common pattern for plantation organization.

"The head of the plantation is the manager, who is generally appointed by the controlling

'factor' or agency. He has wide authority, not only over the agricultural and industrial production, but also over the general recreational program and other activities of the community. The plantations range in value from about 4 to 10 million dollars each, and the managers must be men of training and ability.

"* * * They (plantation managers) are clearly recognized as the final source of authority in all aspects of plantation life."

* * * * * * *

"The timing of each step in the process of sugar production is extremely important. There is a definite optimum time for each operation, when the expenditure of man-days of labor, the use of machines, or of materials such as fertilizer or irrigation water, will be more productive in terms of yields and cost than if the work is done at any other time. It must also be remembered that, since cane cannot be stored for more than 2 or 3 days without spoiling, the planting and production schedule must be such that enough cane will continue to appear at the mill, day after day, to keep it operating on a full schedule.

"* * * Moreover, since cane requires from 14 to 22 months to reach maturity, plans must be projected a year and half or more in advance. Thus the organization and planning of plantation operations is an exceedingly detailed and complicated problem.

* * * * * * *

"The central business offices, usually located in the heart of the plantation community, maintain detailed records not only of the costs of production by fields, but also of the operations that have

already been applied to each field, as well as a projected plan for future operations, with indications of the exact time when they must be undertaken.

* * * * * * *

"Thus the structural organization and functioning of a plantation is not unlike that of an army, with its clearcut lines of authority and its careful program for attaining given objectives * * *" (Emphasis added.)

The size and degree of mechanization and integration of appellant's operations are indicated by the following figures:

The appellant corporation produces sugar cane on 9,663 acres of land. (R. 133.) On September 1, 1946, it employed 1,144 employees in connection with its manifold and varied operations in the District of Waialua. (R. 136.) In 1945, it produced 56,193 tons of raw sugar. (R. 132.) Appellant operates a railroad consisting of 56 miles of main line track and 9.34 miles of portable track. In connection with this extensive railroad system it operates six 25-ton steam locomotives, one 17-ton steam locomotive, one 12-ton steam locomotive, one 12-ton gasoline locomotive, and one 14-ton diesel locomotive, 200 steel cane cars and 512 wooden cane cars. (R. 158-163.)

See Appendix A (p. i, infra) for a description of the highly industrialized and synchronized operation of producing raw sugar from sugar cane in the Territory, as set forth in Bulletin 687.

In paragraph 33 of the complaint (R. 30) there is set forth a table which shows in dramatic form the

tremendous increase in mechanization and improvement in technology which has taken place in the last three decades. The table shows that whereas in 1910 it took 21.2 man days for appellant to produce a ton of raw sugar, in 1945 it required only 4.9 man days to achieve the same result.

In short, as stated at page 36 of the aforementioned Bulletin No. 926, "operational problems on a sugar plantatiton are comparable to those of a Detroit factory rather than those of an Iowa farm."

3. The "Company Town", including recreational and other facilities, is developed to a point unique in the industrial world.

For a description of appellant's "Company Town" see Appendix "B". (p. iii, infra.) The quotations are from the record, pages 31, 32, 32, 34 and 35.

4. The sole and only purpose of the industry is the production of raw sugar and ultimately refined sugar. The operation of the mill is not, as claimed by appellant, incidental to the growing of cane, but in fact the growing of the cane is subordinated to, and is synchronized with, the needs and capacities of the mill.

On page 21 of Bulletin 687, we find the following statement:

> "*Mill operations.*—The plantation mill, with few exceptions, operates on a 24-hour schedule of three 8-hour shifts. There must therefore be a constant flow of cane into the mill. The careful planning of the planting and harvesting schedules involving the many operations described above is all designed to that end."

And at page 24:

"In Hawaii the growing of cane and manufacturing of raw sugar are combined in a single plantation, *based on a carefully planned planting and harvesting program to provide a continuous flow of cane into the mill.* Under these conditions small scale operations are inefficient. In other sugar-producing areas, where small scale farming persists, there is naturally a sharp line of demarcation between the growing of sugar cane and its processing, the farmers selling to the processors." (Emphasis added.)

5. The Hawaiian sugar industry, in its organization and techniques, is vastly different from that of other sugar-producing areas.

Bulletin 687, page 23:

"The Hawaiian sugar industry is more completely integrated than that of other sugar-producing areas. There are a number of reasons for this. In Louisiana, Puerto Rico, the Philippines, and even in the sugar beet areas, a farming system existed prior to the growth of the sugar industry. Farmers already controlled the land and turned to cane or beets because they became profitable crops. Sugar production in those areas thus grew along the lines of the established small farming system.

"The Hawaiian sugar industry, however, began on land which was relatively undeveloped. The taro patches cultivated by the native Hawaiians were on lands unsuitable for sugar. The areas now occupied by the 38 sugar plantations were, for the most part, (1) forest land, (2) useless arid land, or (3) semiarid pasture land.

"The land tenure system is quite different from that in any other part of the United States and is a legacy of the feudal system under native royalty which preceded annexation. At that time such lands as were suitable for sugar cultivation were owned in large tracts and were, therefore, leased or purchased in large tracts for plantation purposes. Nearly half of the land is still leased (table 6). Hawaiian sugar production from its very inception was on a larger scale than is typical of mainland farming. As the plantations have decreased in number, the output of the industry as a whole has increased in value.

* * * * * * *

"For the following reasons the trend is toward even larger plantation units:

"(1) In Hawaii the growing of cane and manufacturing of raw sugar are combined in a single plantation, based on a carefully planned planting and harvesting program to provide a continuous flow of cane into the mill. Under these conditions small scale operations are inefficient. In other sugar-producing areas, where small scale farming persists, there is naturally a sharp line of demarcation between the growing of sugar cane and its processing, the farmers selling to the processors.

"(2) The arid and semiarid lands, which constitute over half of the area now under cane cultivation, required the construction of large irrigation systems too costly to be undertaken except by large-scale enterprises, or by governmental or collective action.

"(3) Unlike other areas, the cane crop of Hawaii takes 14 to 22 months to mature. It

needs a much greater quantity of fertilizer per acre. Because of the topography, it requires expensive systems of transportation between field and mill. To accomplish these ends requires a large capital outlay and involves risks more readily carried by large-scale corporate units."

It will be especially noted that the production of sugar in the Territory, unlike other sugar-producing areas, is not based on a "farm" economy.

And from page 70 of Bulletin No. 687 we quote as follows:

"The typical Hawaiian sugar plantation is a small world in itself, consisting of (1) the plantation town, which includes stores, clubs, a motion-picture theater, a recreation field, hospital, and such services as electric lighting, a water system, police and fire protection; (2) a transportation system, including trucks, tractors, and in most cases a railroad; (3) the plantation land area, only about a third of it devoted to sugar, the remainder including some unused wooded land, a small dairy or ranch, an area set aside for diversified crops, and the plantation town itself; (4) repair shops with expert mechanics for the maintenance of trucks, tractors, railroad equipment, and mill machinery; (5) the sugar mill; (6) the central office of the management where continuous and remarkably detailed records covering every aspect of the plantation are kept."

6. **The "agency" or "factor" system which prevails in the Hawaiian Islands concentrates control of virtually the entire sugar production in the hands of five business groups known as "The Big Five."**

While the appellant alone produced in 1945 only 7% of the raw sugar produced in the Hawaiian Islands (Stip. of Facts, p. 3), this figure is misleading as to the size and importance of appellant's operations because of the prevailing "agency" or "factor" system which is peculiar to the Hawaiian Islands. Under this system, all of the sugar plantations (with perhaps a single and unimportant exception) are controlled by one of five corporate factors or agents. The appellant is controlled by Castle & Cooke, Ltd. (Bulletin 687, p. 28.) Actually appellant and the two other plantations controlled by Castle & Cooke, Ltd., produced in 1938 (the last year for which figures are available to us) approximately 15½% of all of the raw sugar produced in the Hawaiian Islands.

For a description of the agency system, as set forth in Bulletin No. 687, at pages 26, 27, and 28, see Appendix C (p. vi, infra).

7. **The Hawaiian Sugar Planters' Association.**

All of the sugar producers in the Islands (with the unimportant exception of three small ones) are members of the Hawaiian Sugar Planters' Association. For a description of this organization, we quote from pages 28, 29, and 31 of Bulletin No. 687:

> "The Hawaiian Sugar Planters' Association represents a further step in coordination. Its function is to unify policies in the Hawaiian sugar

industry as a whole relative to (a) the discovery and adoption of new agricultural techniques; (b) the invention and adoption of labor-saving equipment; (c) effective representation of the Hawaiian viewpoint relative to Territorial and Federal legislation affecting sugar; (d) the formulation of a general labor program relative to wages, hours, and working conditions, including plans for the promotion of general welfare on the assumption that the welfare of Hawaii is the welfare of the sugar industry.

"* * * A further step in the integration of the Hawaiian sugar industry was taken when three of the large sugar agencies instituted a joint program for refining and marketing the bulk of the Island sugar. Under this plan over half of the total production (about 550,000 tons annually) is refined by the California and Hawaiian Sugar Refining Corporation. *The stock in this corporation is owned by 33 of the Hawaiian plantations, and its management is under the direction of officials of the sugar agencies in Honolulu.* About 100,000 additional tons are annually refined by the Western Refinery and 300,000 tons by the National Sugar Refineries in New York. But all of it is marketed under an agreement whereby all sugar producers in the Hawaiian Sugar Planters' Association use the same marketing organization and receive the same price per ton. Thus the integration of the Hawaiian sugar industry has been carried to its ultimate step in the refining and marketing of the product on the mainland." (Emphasis added.)

It is a matter of record in this case (Appellees' Ex. 4) that appellant is one of the owners and mem-

bers of the California and Hawaiian Sugar Refining Corporation, which operates a large sugar refinery at Crockett, California. This fact also belies the impression being carefully nurtured by appellant in this case that it is merely a "farmer" engaged only in growing sugar cane and processing the same into raw sugar.

As to the importance and size of Hawaiian refined sugar production, we refer to appellant's Complaint. (R. 10.) It is there stated that between 1941 and 1945, the Territory produced between 10.76% and 13.3% of all sugar, both beet and cane, distributed for consumption in the United States.

Conclusion.

The production of sugar in the Hawaiian Islands is actually one huge "factory" operation, rigorously controlled by a small group at the top and bearing no real relation to "farming" or to "farmers" as the terms are known, used, and commonly understood in the United States by the "man in the street" and by members of the Congress which enacted the Fair Labor Standards Act.

II. WE PROCEED NEXT TO A DISCUSSION OF APPELLANT'S CONTENTION THAT ALL OF THE APPELLEES, AND THOSE SIMILARLY SITUATED, ARE ENGAGED IN "AGRICULTURE", AS THAT TERM IS DEFINED IN § 3(f) OF THE ACT, AND ARE THEREFORE EXEMPT FROM BOTH THE MINIMUM WAGE AND OVERTIME PROVISIONS THEREOF.

The word "agriculture" is defined in § 3(f) as follows:

"(f) 'Agriculture' includes *farming* in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a *farmer* or on a *farm* as an incident to or in conjunction with such *farming operations,* including preparation for market, delivery to storage or to market or to carriers for transportation to market." (Emphasis added.)

A. The Legislative History of the Exemption.

Appellant devotes considerable space in its brief and places great reliance upon the Congressional discussion which preceded the adoption of the "agriculture" exemption in the Act. Carefully selected excerpts from the discussion are quoted in an attempt to convince this Court that Congress intended the "agriculture" exemptions to apply to all of the many and varied operations of the appellant corporation as "performed by a farmer or on a farm as an incident to or in conjunction with * * * farming operations."

The Congressional debates do not support appellant's contentions in this regard.

1. It is clear from a reading of the debates that when reference was made therein to sugar, the sena-

tors and congressmen were discussing the methods prevailing in the sugar producing areas of the southern states. The only occasion when sugar processing was mentioned was when the question was raised by Senator Overton of Louisiana, and he was, of course, referring to the situation prevailing in his state, where much of the sugar cane is raised by small individual farmers, many of whom process the cane themselves. At no time during the debate was there any reference to the highly integrated and industrialized sugar industry as it exists in the Hawaiian Islands. The senators and congressmen were talking about "farms". For example, in the course of the discussion, Senator Black stated as follows (81 Cong. Rec. 7657), "* * * the bill does provide that those things done with reference to commodities produced on the *farm* by a *farmer* are not included in the possible application of Act by the board". (Emphasis added.)

2. The question of whether the *processing* of sugar cane would be exempt under the "agriculture" exemption was left unanswered by the debate. See the following colloquy between Senators Overton and Black (81 Cong. Rec. 7658) wherein Senator Black refused to answer in the affirmative Senator Overton's question whether the processing of sugar cane when performed by the farmer himself, would be considered within the "agriculture" exemption:

> "Mr. Overton. As I understand the Senator, in cases where some farmers process their own products and other farmers carry their products to some processor to be processed, then by rea-

son of the fact that some farmers carry their products to a processor to be processed, the farmers who process their own products would not be considered as engaging in a practice which is ordinarily incident to farming operations.

"Mr. Black. I could not say as to that. It depends altogether on the facts as to what is a necessary incident to farming. As I said, there are some things so far removed from farming that all of us would know instantly they did not constitute a farming operation. The illustration I gave was of a farmer erecting on his farm a factory and manufacturing anything you please, whether something he grows or not, who employs many people to manufacture it, and then ships it in interstate commerce. The mere fact that he has such a plant on his farm would not make the manufacturing of shirts, for instance, a farming operation. It would still be a manufacturing operation. The same reasoning would apply to any other process of manufacturing."

On page 40 of its brief, appellant refers to certain statements made recently by appellees' union before two legislative committees which were considering revisions of the Act. Excerpts from the statements are set forth in appellant's brief at page 93. These statements refer merely to the Act *as presently interpreted by the employers.* In these statements the union is not conceding that these interpretations are correct and will be sustained by the Courts. We might point out, however, that *any* interpretation placed upon a provision of the Act by the trade union to which appellees belong would be completely irrele-

vant and in no way binding upon this or any other Court. *Bay Ridge Operating Co. v. Aaron,* 92 Law. Ed. Adv. Opinions 1146, 1152; 68 S. Ct. 1186.

3. The most conclusive evidence that Congress did not intend the "agriculture" exemption to extend to the processing of raw sugar is the fact that it expressly exempted such processing from the overtime provisions of the Act (but not the minimum wage provisions thereof) in § 7(c). (*Bowie v. Gonzalez* (C.C.A. 1), 117 F. (2d) 11, 17, hereinafter discussed more fully.)

B. The conclusion appellant attempts to draw from the Congressional debate is not supported by the Administrator's interpretations.

Appellant discusses at length Interpretative Bulletin No. 14, issued August 21, 1939, which sets forth the administrator's opinion as to the meaning and extent of the "agriculture" exemption. It should be noted that this bulletin was issued less than one year after the Act became effective, and before there were any authoritative Court decisions construing the provisions thereof.

It is true that Bulletin No. 14 (Par. 10(b)) states that in the opinion of the administrator, "If a company has sugar cane fields and also a mill, the transportation of its own sugar cane to the mill seems an incidental practice which is included in this term (Practices * * * performed by a farmer)." The bulletin also states that, in the administrator's opinion, "manufacturing raw sugar, cane or maple syrup and molasses" *when performed by a farmer,* consti-

tutes "preparation for market" as used in the Act's definition of "agriculture".

However, after the decision in January, 1941, of the First Circuit Court of Appeals in *Bowie v. Gonzalez,* 117 F. (2d) 11 (hereinafter more fully discussed), the administrator reversed his opinion, declaring that henceforth the exemption did not apply to mill workers although the mill owner was grinding only cane produced by himself. (2 C.C.H. Labor Law Service, par. 25,651.70.) Even prior to such reversal, the administrator held that the exemption did not apply to a mill owner grinding cane produced by others.

The statement in Bulletin No. 14 that the transportation of a mill operator's own cane to his mill constitutes "agriculture" must therefore be disregarded, because it is contrary to the decision of the First Circuit Court of Appeals in *Vives v. Serrales,* 145 F. (2d) 552 (hereinafter discussed at length) handed down after Bulletin No. 14 had been issued.

In considering Bulletin No. 14 it should also constantly be kept in mind that the administrator was discussing "farmers" and "farms" as those terms are known in the continental United States and he obviously did not have in mind the huge, highly mechanized and integrated factory operations in the Territory of Hawaii. In this connection we quote from Section 10 of Interpretative Bulletin No. 14:

> "It should be noted with respect to all of these practices that they must be performed by the *farmer* and his employees and that such prac-

> tices must be incident to or in conjunction with the *farming operations* of the *farmer*. It makes no difference whether they are performed on or off the *farm* if performed by a *farmer*. The line between practices which are incident to or in conjunction with *farming operations,* and those which are not, is not susceptible of precise definition. The agricultural exemption, however, would seem to include only practices which constitute a subordinate and established part of the *farming operations*. Factors that would indicate that the practices performed by a farmer are thus subordinate would be, among other things, that most of the employees engaged in such practices are normally employed also in *farming operations* upon the *farm,* and that these practices occupy only a minor portion of the time of the *farmer* and such employees and do not constitute the *farmer's* principal business." (Emphasis added.)

To call appellant in this case a "farmer" and its huge plantation, factory and company town a "farm", is to rob these words of their historic meaning.

In support of appellant's contention that its office and maintenance workers are also engaged in "agriculture" appellant quotes from Paragraph 12 of Bulletin No. 14, reading as follows:

> "We have received inquiries concerning office help—secretaries, clerks, bookkeepers, etc.—night watchmen, maintenance workers, engineers, etc., who are employed by a farmer or on a farm in connection with the activities described in the definition of 'agriculture' contained in Sec. 3(f). In our opinion such employees are exempt".

However, in the case at bar only a portion of the time of appellant's office and maintenance workers is related to the actual cane production operation. Much of their time and effort is related to activities having nothing to do with the production of cane. (See Stipulation of Facts, R. 235, 241-251, 253.) Obviously the administrator's statement refers to office and maintenance workers functioning exclusively with reference to farming operations.

C. The cases.

There have been to date only four Circuit Court decisions dealing with the Fair Labor Standards Act and sugar cane, all of them rendered by the First Circuit Court of Appeals.

Bowie v. Gonzalez (C.C.A. 1), 117 F. (2d) 11. In that case the appellants operated sugar mills in Puerto Rico which crushed cane grown not only by them, but also by independent growers known as "colonos". The appellants contended that their employees engaged in transporting the cane to the mills, in processing the cane at the mills, and in transporting the raw sugar to storage and marine terminals were "employed in agriculture" and thus exempt from the minimum wage provisions of the Act. In a lengthy and carefully reasoned opinion, the Court rejected this contention. In so doing, it made the following significant observation (pp. 16, 17):

> "* * * Being a remedial statute, the appellants must bring themselves within both the letter and spirit of the exceptions since they are subject to a strict construction. *Fleming v. Hawkeye Pearl*

Button Co., supra; cf. *Morris Canal Co. v. Baird,* 1915, 239 U.S. 126, 36 S. Ct. 28, 60 L. ed. 177; *Citizens' Bank v. Parker,* 1904, 192 U.S. 73, 85, 24 S. Ct. 181, 48 L. ed. 346.

* * * * * * *

"The appellants contend that their employees engaged in the production and transportation of raw sugar are engaged in 'agriculture' within the meaning of Section 13(a)(6) and Section 3(f) and are thus entirely exempt from the Act. It is agreed by both parties that those employees engaged in the production and harvesting of sugar cane are clearly engaged in agriculture. The only dispute involved those employees engaged in the mills and the transportation facilities. It is our opinion that the latter are not engaged in 'agriculture' as defined in the statute.

* * * * * * *

"The most convincing argument that the processing of sugar cane into sugar was not included within the term 'agriculture' is found in the provisions of Section 7(c). All the sections relating to exemptions are in pari materia and must be construed together to form a consistent whole, if possible. Section 7(c) exempts from the hours provisions of the Act the processing of sugar cane into sugar. If such processing is included within the term 'agriculture' it would be entirely exempt from the Act and the specific inclusion of such processing in the exemptive provision of Section 7(c) would be unnecessary. But the construction of the word 'production' in Section 3(f) to mean agricultural production is entirely consistent with Section 7(c), which provides specific exemptions for certain detailed processing of agricultural commodities."

For additional excerpts from the Court's discussion, see Appendix D, p. ix, infra.

This same case again came before the First Circuit Court (*Gonzalez v. Bowie,* 123 F. (2d) 387) on an appeal by the employees. They contended that the District Court, on remand from the decision of the Circuit Court in the first case, was in error in holding that employees engaged in transporting the *employers'* sugar cane to the employers' mills were exempt because "employed in agriculture". The Circuit Court in the later decision refused to revise the ruling of the District Court in this respect only, however, because the District Court in its first decision had made the same ruling and the employees had not appealed therefrom. The Circuit Court stated at page 391:

> "The district judge was correct in refusing to hold that the judgment should include those employees engaged solely in the transportation of the sugar cane of the employers. This group was clearly excluded from the protection of the Act by the original judgment of the district court. From that judgment the employees took no appeal and any issue with respect to the status of this group of employees consequently was not before us on the prior appeal."

Thus, in neither the first nor second *Bowie* case did the Circuit Court pass upon the question of whether the transportation of the employer's cane to the mill came within the "agriculture" exemption.

Next came the case of *Calaf v. Gonzalez,* 127 F. (2d), 934.

The question involved in that case was (page 936):

> "* * * whether the employees who are engaged in the transportation of sugar cane from the farms of the defendants, who are the joint owners of the farms, the mill and the railroad system, and the employees who are engaged in the repair and maintenance of such transportation facilities are covered by the Act."

The Court stated that it could hold all of these employees as non-exempt on the ground that it was not possible to segregate the operations as they pertained to the farms of the employers and as they pertained to the production of the independent farmers or colonos. However, the Court declined to rest its decision on this narrow ground, stating as follows at pages 936, 937 and 938:

> "* * * *We place our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather than to farming and therefore is not exempt under the Act.* (Emphasis added.)
>
> "The scheme of the Fair Labor Standards Act of 1938 is broad and comprehensive with the purpose of including all employees engaged in interstate commerce or in the production of goods for commerce, except those specifically exempted. The Act is remedial in its nature and should be liberally construed and the exceptions to the coverage of the Act should be narrowly construed. * * * It is clear from the quoted section (§ 3[f]) that in order for an operation to be exempt from the application of the Act it is necessary that it be a farming operation, or incident to farming.

What is incident to farming must be determined upon the basis of all the pertinent facts in the case, always keeping in mind the purpose of the Act and the circumscribed nature of the exemptions * * *

"The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation an incident to farming. The issue, therefore, is not whether the same owners manage and control the farms and the transportation system but rather whether transportation is incident to farming or incident to milling, an operation specifically within the purview of the Act.

"* * * There seems no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act. We, therefore, hold that all the employees before us are covered by the Act."

The most recent case is *Vives v. Serralles* (C.C.A. 1), 145 F. (2d) 552. It is relied on by appellant to support its contention that the transportation of cane from the fields to mill in the case at bar comes within the agricultural exemption. Far from giving comfort to appellant, the case supports the decision of Judge Metzger below.

In the *Vives* case, all of the sugar cane processed at the employer's mill was grown by the employer

on various farms owned by him. The employer maintained a permanent railroad transportation system which picked up cane from "concentration points" on the outlying farms and transported it to the mill. The cane was hauled by the harvesters thereof to the "concentration points" on the outlying farms by means of ox carts, railroad cars pulled by oxen on portable tracks laid in the fields, and by means of steel cars pulled by tractors to the "mainline". The railroad cars would then be switched on to the mainline and hauled away by the mainline's locomotives. The cane pulled to the mainline in ox carts was dumped thereat and reloaded onto the mainline's cars. The cane hauled to the mainline in steel cars was reloaded into mainline cars by means of mechanical hoists.

On the particular farm on which the mill was located, the cane was hauled by the farm workers direct to the mill's conveyor belt in the same fashion as the cane produced on the outlying farms was hauled to the mainline "concentration points."

The Court held that the farm workers on the outlying farms engaged in hauling the cane to the railroad "concentration points", and the farm workers on the farm on which the mill was operated engaged in hauling the cane direct to the mill, were exempt from the Act under § 13(a)(6) of the Act.

The Court distinguished the *Calaf* case as follows (pp. 554, 555):

> "This court held in Calaf v. Gonzalez, 127 F. (2d) 934, 936, that employees engaged in the

transportation of sugar cane from the farms of employers, who were the owners of the farms, the mill and the railroad system, were covered by the Act. In that case we said that 'we place our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather than to farming and therefore is not exempt under the Act.' The plaintiffs evidently rely on that language. But in the Calaf case the plaintiffs were engaged in the operation, repair, and maintenance of the company railroad in such types of work as the construction and repair of rolling stock, splitting wood for engines, repairing main railroad lines, signaling at railroad crossings, fireman and brakeman on the locomotive. We were not merely verbalizing a distinction in saying that 'transportation * * * is incident to milling rather than to farming'. *We pointed to the following guides in reaching our decision: 'the workers are all employed by the central. Their names are found on the payroll sheets of the central. * * * The locomotives and the cars move from the mill to the farms and back. The persons engaged in the transportation of sugar cane do no agricultural work.'* (Emphasis added.)

"In this case the defendant contends that it owns many farms where it is engaged exclusively in the planting, cultivating, and harvesting of sugar cane; that once that is done transportation enters, and after transportation, milling, but before the sugar cane can begin to move over the transportation system to the mill it must first be gathered in and brought to concentration points at the defendant's farm units.' So far as the

> plaintiffs in group one are concerned, their activities begin at a point when the sugar cane has been cut in the field and continue up to the concentration point. To extend coverage to them involves broadening the concept of 'transportation' so as to include the activities of workers right in the fields at a point just short of the actual cutting of the cane. So far as group two is concerned, the problem is the same. * * * The situs of the activities in which these plaintiffs were engaged is the field. If we rested our decision on the rationale of the Calaf case we would hold the concentration point as the line of demarcation between 'transportation as an incident to milling' and 'transportation as an incident to farming'."

Appellant draws a completely erroneous conclusion from the *Vives* care.

"* * * the case must be regarded as authority for the proposition", says appellant, "that where, as here, an employer's total operations take place on the farm where he grows cane and transports and grinds same into raw sugar, all such operations are within the agricultural exemption." (Appellant's Brief, p. 44.) The case stands for no such proposition. The case at most stands for the proposition, which we think to that extent erroneous, that transportation operations preceding the loading of cane into cars of the "mainline" or permanent railroad, and the switching of cars onto such line, are within the agriculture exemption. The Court carefully points out (p. 554) that it is not changing the rule of the *Calaf* case that em-

ployees engaged in transportation activities, that is, activities in connection with the "mainline" or permanent system, are not engaged in agriculture. A careful reading of the *Vives* case fails to disclose any language by way of *dicta* or otherwise which even remotely supports appellant's conclusion. As to operations within the mill being within the agricultural exemption, as claimed by appellants, we wish to point out that one of the workers involved in the *Vives* case was a mill worker named Lawreano Vargas, and there was no contention made that he was engaged in "agriculture", and thereby exempt under § 13(a)(6). The only question as to him was whether he came within the processing exemption of § 7(c).

In the case at bar we do not have the "concentration point" system which prevailed in the *Vives* case. It therefore seems clear that "transportation", as distinguished from "harvesting", begins in our case at the time the cane is placed in the railroad cars in the fields. To that extent we do not agree with the trial Court's decision that "agriculture" continues until the loaded cane cars are hauled from the field and reach the "mainline" railroad. Our position in this regard is borne out by the fact that in the *Vives* case the Court was impressed by the fact that there the cane was produced on numerous individual and separated farms, these farms being administered separately from the mill operations, although all were under one ownership. The workers held exempt under § 13(a)(6) were all carried on farm payrolls as distinguished from the mill payroll. This is not

true in the case at bar. Furthermore, as heretofore pointed out, the highly industrialized and integrated factory operations of the appellant in this case, including the growing and harvesting of sugar cane, cannot be held to constitute a "farm" in the usual and traditional sense of the word. Nor can we lose sight of the further distinguishing features heretofore discussed, such as appellant's sugar refining activities (Appellee's Ex. 4), etc.

McComb v. Consolidated Fisheries Co., 75 F. Supp. 798 (D. Del. 1948) cited by appellant at page 42 of its brief, is not in point. That case involved the fishing industry exemption (§ 13[a][5]), which is much broader than is the "agriculture" exemption, and extends by express wording to the "processing * * * canning * * * curing * * * storing" of fish and by-products thereof.

We find nothing in the holding in *Damutz v. Pinchbeck* (C.C.A. 2), 158 F. (2d) 882, cited by appellant on page 16 of its brief, which is contrary to the decision of the lower Court in the case at bar. The employer in that case operated two greenhouses in connection with a wholesale floral business. The employee involved fired the boilers which supplied heat to the greenhouses. The Court held this employee to be exempt under § 13(a)(6). We fail to see any support in this decision for appellant's contentions that the mill and railroad employees of the appellant come within the "agriculture" exemption.

Under the well-established rules concerning statutory construction of exemption provisions, and keep-

ing in mind the remedial nature of the Act, it seems clear that only those of appellant's employees whose activities relate directly to the preparation of the earth for sugar cane, the planting, watering and weeding thereof, and the severing of the cane from the ground, are employed in "agriculture" as that term is defined in the Act.

III. WE COME NOW TO APPELLANT'S CONTENTION (APPELLANT'S BRIEF, p. 51) THAT ALL OF THOSE APPELLEES ENGAGED IN THE TRANSPORTATION OF CANE TO THE MILL, THE PROCESSING OF CANE INTO RAW SUGAR AT THE MILL, AND IN INCIDENTAL AND RELATED ACTIVITIES, INCLUDING MAINTENANCE AND REPAIR WORK, ARE EXEMPT FROM THE OVERTIME PROVISIONS OF THE ACT, PURSUANT TO § 7(c) THEREOF. APPELLANT FURTHER CONTENDS THAT THIS EXEMPTION APPLIES EVEN DURING THE SO-CALLED "OFF-SEASON" (DESCRIBED IN THE STIPULATION OF FACTS [R. 210-215]), AND ALSO DURING THE 24-HOUR WEEKLY SHUT-DOWN PERIOD DURING THE PROCESSING SEASON FROM 2 P.M. SATURDAY TO 2 P.M. SUNDAY.

Section 7(c) provides that "In the case of any employer engaged in the 'processing of * * * sugar cane * * * into sugar (but not refined sugar) * * *' the provisions of subsection (a) (of § 7) shall not apply to his employees in any place of employment where he is so engaged."

A. The "Off-Season".

We deal first with appellant's contention that the § 7(c) exemption applies even during the so-called "off-season", during which extensive repairs are made to the mill equipment, and no raw sugar whatsoever

is produced. During the years 1941 to 1945 inclusive, the "off-season" in appellant's operations averaged between 3½ and 4 months in duration, terminating around the middle of January of each year. (R. 28.) No cane is harvested, transported, or processed during the off-season. (R. 28.)

In *Maisonet v. Central Coloso, Inc.* (D.P.R. 1942), 2 W.H.C. 753, the United States District Court for Puerto Rico had this precise question before it. In Puerto Rico, as in the Territory of Hawaii, a substantial period occurs during each year when the sugar mills are closed down for repairs and no raw sugar is produced. The employers nonetheless contended that the § 7(c) exemption applied during the "off" or "dead" season. The Court rejected this contention, stating at pages 755 and 756 as follows:

> "The primary purpose of the exemption in question is to permit the employment of persons in seasonal industries, particularly where perishable commodities such as sugar cane are concerned, without the hardship of paying overtime. 'Sugar cane is highly perishable and must be ground very soon after it is cut' (Bowie v. Gonzalez, 117 F. 2d 11, 14 [1 WH Cases 99, 100]). But this situation does not obtain during the dead season. There is no similar reason why employees should work more than 40 hours in 'construction and repair work and preparation of the mill for the coming grinding season (zafra).'"
>
> * * * * * * *
>
> "The administrator, who has filed a brief as amicus curiae, cited Fleming v. Hawkeye Pearl

> Button Co., 113 F. 2d 53, 57 [1 WH Cases 81, 85] (C.C.A., 8th Cir.) as authority for his contention that 'proceeding should be limited to these activities which have to do with the conversion of sugar cane into raw sugar and those operations which are so related thereto that they should be considered to have been included.' The Administrator's position seems well taken. In addition to the fact that employees working during the dead season do not come within the purpose of the exemption, it would seem, under the rule of strict construction of exemptions, that during the time these employees work in repair and maintenance, their employer is not 'engaged in the processing of sugar cane into sugar.' "

To the same effect, see *Heaburg v. Independent Oil Mill, Inc.* (W.D. Tenn., 1942), 2 W.H.C. 655, and *Abram v. San Joaquin Cotton Oil Co.* (S.D., Cal., 1943), 49 F. Supp. 393. Both these cases involved the processing of cottonseed, but the principle involved is the same.

While these cases are of course not binding on this Court, the appellant presents nothing substantial in its brief by way of argument or facts which would support a different interpretation of § 7(c) for the sugar producers in the Territory of Hawaii. Appellant lays great stress on the word "where" in § 7(c) and argues that it doesn't matter what kind of work a man is performing so long as he is performing it in a place where cane processing also takes place from time to time. Carried to its logical extreme, appellant's argument would mean that if appellant decided

to manufacture shoes in its mill during the off-season, or as an adjunct to its cane processing during the processing season, the men engaged in the shoe end of the business would also be covered by the sugar processing exemption.

As pointed out by Judge Metzger in his opinion, the case of *McComb v. Consolidated Fisheries Co.* (D. Del. 1948), 75 F. Supp. 798, does not support appellant's contention because in that case the evidence disclosed that processing continued even during the so-called "clean-up" period.

Appellant's lack of confidence in its position with respect to the "off-season" work is further demonstrated by the fact that appellant is now, and has been for a number of years, paying its employees during the "off-season" the overtime compensation required by § 7(c) of the Act. (R. 79-80.)

The mill is also shut down completely each week for a 24-hour period commencing at 2 p.m. Saturday and ending at 2 p.m. Sunday. (R. 183-184.) During this period no processing is carried on and a reduced crew performs purely repair and clean-up work. It follows from the cases heretofore cited with reference to the "off-season" that during the weekly 24-hour shutdown period, when cane is not being processed, the § 7(c) exemption likewise does not apply. The only answer appellant makes to Judge Metzger's decision in this regard is that to sustain it would mean that a number of appellant's employees would lose the processing exemption and would be covered by the

Act. (Appellant's Brief, p. 64.) We fail to see the relevancy of this argument.

We submit that the trial Court's decision that none of the appellees are subject to the § 7(c) exemption during the off-season, or while they are engaged in the week-end repair work, is a correct and logical one. To hold otherwise would subvert the broad social purposes to the Act.

B. The transportation of sugar cane to the mill.

Appellant cites *Calaf v. Gonzalez* (C.C.A. 1), 127 F. (2d) 934 (cited by appellant as *Collazo v. Gonzales*), as authority for the proposition that its transportation employees are exempt under the "processing" exemption. (See p. 57 of Appellant's Brief.) The *Calaf* case stands for the very reverse of this proposition. In that case the question presented to the 1st Circuit Court was whether the District Court for Puerto Rico was correct in holding that employees engaged in the transportation of sugar cane to the mill, and those engaged in the repair and maintenance of transportation facilities, were subject to the Act. The lower Court held that neither the "processing" nor the "agriculture" exemption applied to these employees. The Circuit Court affirmed the decision of the District Court, holding that transportation was *incident* to the mill operation, and did not come within the "agriculture" exemption. The correctness of the District Court's decision that these employees were not subject to the "processing" exemption was not attacked on the appeal nor even discussed by the Cir-

cuit Court for the obvious reason that these operations do not take place in the "place" where the processing operation takes place and hence are clearly outside the exemption.

Appellant in its brief (pp. 56, 57) also cites *Bowie v. Gonzalez* (C.C.A. 1), 117 F. (2d) 11, as standing for the proposition that the transportation employees are within the § 7(c) exemption. The *Bowie* case did *not* have this question before it. The sole question in that case was the scope of the "agriculture" exemption.

The administrative interpretations also clearly indicate that unless the worker is employed in the structure where the processing operation is carried on, he is not exempt. (See § 23[a] of Administrator's Interpretative Bulletin No. 14, quoted at p. 42, infra.)

See also *Walling, etc. v. Bridgeman-Russell Co.* (D. Minn. 1942), 2 W.H.C. 785, 790:

> "4. The term 'place of employment' as used in Section 7(c) of the Act means those portions of an establishment devoted by the employer to 'first processing' operations. The Section 7(c) exemption is applicable to any employees who perform exclusively the operations described in this Section, and any employees who, though not engaged in 'first processing' operations, are engaged *exclusively* in occupations which are a necessary part thereof *and perform such duties in those portions of the premises devoted by the employer to 'first processing' operations.* * * *
>
> "5. The applicability of the exemption provided by Section 7(c) is determined by the nature

of the duties performed by the employee during the work week. If, during any part of the work week, the employee performs duties which do not fall within the scope of the exemption, the exemption is not applicable. Consequently, the exemption is not applicable to persons employed as laboratory workers and firemen and engineers in the defendant's Duluth, Minnesota establishment during all the weeks covered by the complaint, * * *'' (Emphasis added.)

See also *Fleming v. Swift & Co.* (N.D., Ill. 1941), 41 Fed. Sup. 825, 831 (affirmed 131 Fed. (2d) 249):

"7. Sec. 7(c) of the Act does not exempt industries from the overtime provisions of the Act, but only the specific processes therein mentioned.

"8. The term 'place of employment' as used in sec. 7(c) of the Fair Labor Standards Act means those portions of the plant devoted by the employer to the handling, slaughtering, or dressing of livestock as those terms are construed herein. In addition to the employees specified in conclusion of law No. 6, any employee whose employment during any workweek is wholly within the place of employment, as herein defined, and who during that workweek is working exclusively in an occupation which is a necessary part of the handling, slaughtering or dressing of livestock, also comes within the exemption of sec. 7(c) of the Act."

C. What activities of the employee appellees are subject to the § 7(c) exemption during the processing season?

It is the appellees' contention that only those of the appellant's employees whose activities in a particular

workweek are *directly and exclusively* connected with the processing of the sugar cane are subject to the § 7(c) exemption. This group would include only those employees engaged in the washing, crushing, boiling, evaporating, centrifuging, and bagging operations, and then only as to those workweeks during which these were the sole activities of such employees. For the reasons heretofore set forth, the exemption would not apply to any of said employees who, in a particular workweek, engaged in repair and maintenance work during the 24-hour shutdown period between 2 P.M. Saturday and 2 P.M. Sunday when no raw sugar is produced.

Appellant on the other hand contends that the § 7(c) exemption applies not only to the activities described above, but also to those workers engaged in the following activities:

(1) Production and storage of bagasse;

(2) Removal of stones, trash, dirt, etc. from the mill;

(3) Handling of bagged sugar after it leaves the mill;

(4) Operation of the Fireroom;

(5) Operation of the Electric Power Plant;

(6) Operation of the Concrete Products Plant;

(7) Operation of the Garage, Service Station and Stables;

(8) Operation of the General Supplies Warehouse;

(9) Operation of the Machine, Welding, Tinsmith, Blacksmith, Cane-loading Machine Repair, Tractor Repair, Electric, Paint, Plumbing, and Carpenter Shops;

(10) Operation of the Laboratory.

Appellant also contends that all of its employees who are machinists, repair men, welders, blacksmiths, tinsmiths, garage mechanics, electricians, plumbers, carpenters, painters, and laboratory personnel are exempt under § 7(c) because part of their work is done on or in connection with cane processing facilities. This contention is advanced even in the face of the stipulation of facts (R. 129-256) which clearly points out that even during the processing season a large part of the time and efforts of all of these employees is spent on or in connection with transportation, housing, irrigation, cultivating, harvesting, and other non-processing facilities.

Appellant's contention is also advanced in the face of the fact (see Exhibit "F" attached to the complaint, R. 114) that all of these activities, with the exception of the fireroom and the electric power plant, have as their base of operations buildings and structures which are entirely separate and apart from the processing mill itself. The warehouse where the bagged raw sugar is stored, the general supplies warehouse, the roundhouse, the electric shop, the garage, the tinsmith shop, the blacksmith shop, the crane repair shop, the tractor repair shop, the carpenter shop, the machine shop, the welding repair shop, the electric

power station, and the chemistry laboratory are all located in separate buildings, and *all* of the employees attached thereto during all or part of most workweeks engaged in activities which are not directly connected with the processing of cane or the machinery and equipment used therein. (See those sections of stipulation (R. 129-256) which describe these activities.)

The Administrative Interpretations.

The following extracts from Interpretative Bulletin No. 14 pertain to the processing exemption and will assist in a determination of the problem here involved:

> "23(a) The determination as to whether all employees of the employer who are working in the establishment are included in the exemption or whether the exemption applies to only such employees as perform the operations described in the section must be made in the light of the legislative history of section 7(c). The congressional debates show that the purpose of this section was to relieve processors of seasonal agricultural commodities from the hour provisions of the act so as to enable them more easily to conduct their operations during peak seasons. It is our opinion, therefore, that only the employees who perform the operations described in section 7(c) *or who perform operations that are so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities into the establishment,* are covered by the exemption. For example, in the ordinary case, none of the

employees in a department separate from the department in which the exempt operations are performed will be exempt. Thus, employees working in the meat-curing or sausage-making departments of a meat packing house will not be within the exemption." (Emphasis added.)

And from Section 18:

"Operations performed on bagasse, such as removing same from the sugar mill, baling and compressing, are not included in the exemption, since such operations do not constitute the *'processing of * * * sugarcane'* and further such operations do not result in sugar or syrup. The exemption, it should be noted, is limited to the processing of sugarcane *'into sugar * * * or into syrup.'*"

And from Section 16:

"The storing of cotton, either before or after compressing, is not, in our opinion, included in the term 'ginning and compressing of cotton'. Support for this position is found in the fact that the word 'storing' was in the bill at one time in connection with an exemption from the hour provisions and was subsequently deleted (see also par. 23)."

The wording of Section 23 of Bulletin No. 14 quoted above was based on the decision of the Federal District Court for the Northern District of Illinois in *Fleming v. Swift* & Co., 41 F. Supp. 825, affirmed in *Walling v. Swift & Co.,* 131 F. (2d) 249, cited above.

The cases.

The case of *Walling v. Bridgeman-Russell Co.* (D. Minn., 1942), 2 WHC 785, which involved the first processing of milk, etc., sets forth certain rules which that Court felt should be followed in determining the extent of the § 7(c) exemption. We quote from the conclusion of law in that case (p. 790):

> "3. Section 7(c) does not exempt *industries* from the overtime provisions of the Act, but only *the specific processes* therein mentioned.
>
> "4. The term 'place of employment' as used in Section 7(c) of the Act means those portions of an establishment devoted by the employer to 'first processing' operations. The Section 7(c) exemption is applicable to any employees who perform exclusively the operations described in this Section, and any employees who, though not engaged in 'first processing' operations, are engaged exclusively in occupations which are a necessary part thereof *and perform such duties in those portions of the premises devoted by the employer to 'first processing' operations* * * *" (Emphasis added.)
>
> "5. The applicability of the exemption provided by Section 7(c) is determined by the nature of the duties performed by the employee during the workweek. If, during any part of the workweek, the employee performs duties which do not fall within the scope of the exemption, the exemption is not applicable. * * *"

It is well settled that where an employee devotes part of his time during a particular week to an exempt

activity, and part of his time to a non-exempt activity, he does not come within the § 7(c) exemption.

Interpretative Bulletin No. 14, § 38;
Shain v. Armour, 50 F. Supp. 907;
Walling v. Bridgeman-Russell Co., supra.

From the foregoing, the conclusion seems inescapable (1) that employees engaged in handling bagasse produced at the mill and employees engaged in handling the raw sugar after it has been sacked are not exempt under § 7(c); (2) that none of the activities or operations heretofore listed at pages 40-41 are subject to the exemptions because such activities and operations do not relate *exclusively* to the *processing* of sugar cane. (R. 129-256.)

Appellant places considerable reliance on *Abram v. San Joaquin Cotton Oil Co.,* supra. In that case, however, the employer was engaged *solely* in the processing of cotton seed. The employer did not produce the cotton from which the seed came, did not separate the seed from the cotton, did not transport the seed to the employer's mill, nor transport the end-products from the mill to the purchasers thereof. While it is true that the Court held that the janitor and watchman at the plant, a truck driver hauling trash away from the plant, and workers unloading cottonseed as it arrived at the mill, were subject to the § 7(c) exemption, the situation involved in the *Abrams* case is clearly distinguishable from that obtaining in the case at bar. In that case the sole operation of the employer was the processing of cottonseed. On the other hand, in addition to process-

ing sugar cane, the employer in the case at bar produces the raw material, transports it to the mill, ships raw sugar to the mainland, participates through stock ownership in the refining operations, and maintains in Hawaii a company town where the workers and their families reside. Furthermore, all of the workers as to whom the appellant in this case seeks to secure the § 7(c) exemption, except those workers in the mill directly and exclusively engaged in the washing, crushing, boiling, evaporating, centrifuging, and bagging operations, devote a large portion of their time and effort to activities unrelated to processing. This was not true in the *Abrams* case.

McComb v. Hunt Foods, Inc. (CCA 9), 167 F. (2d) 905, recently decided by this Court, is also cited by appellant. We fail to see that this case is in any way determinative of the issues here presented. That case merely held that the production of apple juice and pomace from whole apples, apple peelings and cores, was a part of the "first processing" operation. We don't believe the language in the case concerning the weight and scope to be given to statutory exemptions generally, was intended to indicate a departure from the well-established rules regarding the strict construction of statutory exemptions. (*Fleming v. Hawkeye Pearl Button Co.* (CCA 8), 113 F. (2d) 52; *Smith v. Townsend,* 148 U.S. 490, 37 L. Ed. 533.)

Congressional purpose, as expressed in the Act, plainly refutes the contention that activities which may be necessary to processing, as distinguished from processing activities per se, should likewise be held

exempt. Elsewhere in the Act, Congress demonstrated that, where it desired to cover both particular activities and other activities necessary thereto, appropriate language was employed. Thus, § 3(j) grants coverage to employees who produce goods for commerce, and also to employees whose activities are necessary to the production of goods for commerce. But in granting the sugar processing exemption to employers, Congress confined it to the time during which and the place where the processing operations per se were taking place. It would do violence to statutory purpose and language to exempt each and every employee, regardless of the nature of his work or the locale of its performance, merely because certain of his fellow employees were engaged in processing. On such a theory, the provisions of the Act designed to protect workers against abuse could be construed away into virtual ineffectiveness.

IV. APPELLANT CONTENDS THAT EACH OF ITS EMPLOYEES WHOSE WORK DURING A SUBSTANTIAL PORTION OF A WORK WEEK ENTITLES HIM TO EITHER THE AGRICULTURAL OR PROCESSING EXEMPTION, OR BOTH, IS EXEMPT FOR THE ENTIRE WORKWEEK EVEN THOUGH A SMALL PORTION OF THE WORKWEEK IS SPENT IN NON-EXEMPT WORK.

Section 2 of the Administrator's Bulletin No. 14 reads in part as follows:

> "An employee is exempt by virtue of Section 13(a)(6) if, but only if, his work falls within the specific language of Section 3(f). If during any workweek an employee performs work some of

which is exempt under Section 3(f) and some of which is not exempt, the exemption does not apply to him during that workweek. It is our opinion, in other words, that there can be no segregation within a workweek between exempt and nonexempt operations."

The Courts have sustained this interpretation, it being well settled that where an employee devotes part of his time during a particular workweek to exempt activities and part of his time to non-exempt activities, he loses the exemption for the entire workweek.

Shain v. Armour & Co. (W.D. Ky.), 50 F. Supp. 907;

Walling v. Bridgeman-Russell Co. (D. Minn., 1942), 2 WHC 785;

Walling v. De Soto Creamery & Produce Co. (D. Minn., 1943), 3 WHC 395, 397.

The cases cited by appellant in support of its contention in this regard are not at all inconsistent with the Administrator's interpretation quoted above.

V. APPELLANT'S FINAL CONTENTION IS THAT CERTAIN OF THE APPELLEES, WHEN ENGAGED IN REPAIRING AND MAINTAINING APPELLANT'S HOUSES AND RELATED DOMESTIC FACILITIES, ARE NOT "ENGAGED IN (INTERSTATE) COMMERCE OR IN THE PRODUCTION OF GOODS FOR (INTERSTATE) COMMERCE" AND THEREFORE THE PROVISIONS OF THE ACT DO NOT APPLY TO SAID EMPLOYEES. APPELLANT FURTHER CONTENDS THAT EVEN IF SAID EMPLOYEES ARE HELD TO BE SO ENGAGED, THEY ARE NEVERTHELESS EXEMPT FROM THE PROVISIONS OF THE ACT BY VIRTUE OF § 13(a)(6) AND § 7(c).

The employees here under consideration spend a considerable portion of their time repairing and painting company houses, cleaning plantation villages, constructing and repairing plumbing installations in the company houses, and in constructing and repairing the water and sewage systems servicing such houses. They are also engaged in trimming shade trees located around the plantation houses, cutting firewood for use as fuel in the plantation houses, and painting the company gymnasiums and club house. They will be referred to herein as "housing maintenance employees".

It is conceded that these employees, when engaged in the activities described above, are not directly "engaged in (interstate) commerce". However, it is unnecessary that they be so engaged. They are entitled to the Act's protection if they are "engaged * * * in the production of goods for (interstate) commerce" (§ 7[a]). Section 3(j) of the Act defines the word "produced" as follows:

> "(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this

> Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, *or in any process or occupation necessary to the production thereof,* in any State." (Emphasis added.)

The first case cited by appellant in support of its contention with reference to these employees is *McLeod v. Threlkeld*, 319 U.S. 491. However, that case held only that a cook employed by the operators of a railroad commissary was not "engaged in commerce". *Armour & Co. v. Wantock,* 323 U.S. 126, 131:

> "McLeod v. Threlkeld, 319 U.S. 491 [2 WH Cases 75], which did exclude the employee from the scope of the Act, is not in point here because it involved application of the other clause of the Act, covering employees engaged 'in commerce', and the test of whether one is in commerce is obviously more exacting than the test of whether his occupation is necessary to production for commerce."

We likewise concede that the employees here under discussion are not "engaged in commerce" within the meaning of the Act, nor, as we have pointed out, need they be so engaged in order to receive the Act's protection.

Appellant places great reliance on the case of *Wilson v. Reconstruction Finance Corporation* (C.C. A. 5), 158 Fed. (2d) 564. In that case the Dow Magnesium Corporation operated a large war plant

for the production of magnesium. The Defense Plant Corporation maintained approximately 2,000 dwelling houses adjacent to the magnesium plant for the purpose of housing employees of the magnesium plant and their families. The question before the Court was whether or not employees of the Reconstruction Finance Corporation acting as firemen at the housing project were subject to the Fair Labor Standards Act. The Court held that they were not engaged in the production of goods for commerce and, therefore, were not entitled to the benefits of the Act. The holding is not applicable to the case at bar because of the fact that in that case the employees involved were not employees of the operator of the magnesium plant. As the Court stated (p. 565):

> "The independence of the employer of the plaintiffs and the employers of the housing occupants insulates the plaintiffs from the status of producers of goods for commerce."

Appellant then cites the case of *Morris v. Beaumont Mfg. Co.* (W.D.S.C.), 12 Labor Cases, para. 63,687. In that case the operator of a large textile plant in the City of Spartanburg, South Carolina, owned a number of houses scattered throughout the city, which houses were rented primarily to the operator's employees. The question before the Court was whether those workers engaged exclusively in the construction, maintenance, and repair of these houses, were subject to the Act. The Court held they were not. The Court pointed out in the second paragraph of its opinion that "the defendant does not maintain

a mill village in the sense that term is commonly used", indicating that its decision would have been different if the Court was confronted with a "company town" which, as in the case at bar, originated and exists as a component part of the employer's business to insure a constant and stable supply of labor.

Appellant also cites *10 East 40th St. Building Corp. v. Callus,* 325 U.S. 578, which case involved the question of whether maintenance employees of the owner of a 48-story New York office building housing a number of companies engaged in interstate commerce were "engaged in the production of goods for commerce". While the Court held that these employees were not entitled to the coverage of the Act, the decision went off on the ground that the owner of the office building was not himself engaged in interstate commerce, or in the production of goods for commerce. In the case of *Borden Co. v. Borella,* 325 U.S. 680, which was handed down on the same date, the Court held that where the employer of the maintenance employees was himself engaged in interstate commerce, the maintenance employees were entitled to coverage of the Act. The *Borella* case plainly renders the *Callus* decision inapplicable to the case at bar.

The administrator has not taken a definite position on this question, so far as we know. See page 97 of 1944 W. H. Man. where the following question was asked of, and answer given by, the administrator:

> "Question. Our company owns approximately 25 tenant houses which are rented to our em-

ployees. Is the labor used in connection with repairs and improvements of these tenant houses subject to the provisions of the Fair Labor Standards Act?

"Answer (Administrator). It is our opinion that maintenance employees whose activities directly contribute to the production of goods for interstate commerce are properly to be deemed engaged in 'a process or occupation necessary to the production' of such goods and for that reason within the Act's general coverage. See in this connection Section 3(j) of the enclosed copy of the Act. However, we are not prepared at the present time to express any definite opinion regarding the applicability of the Act to employees engaged exclusively in the repair of homes in mill villages. Of course, if in any workweek any such employee in addition to performing work in the mill village performs other work which is covered by the Act, such as maintenance work in or about the actual plant, his employment would be deemed covered during all workweeks when any such covered work was performed."

The Michigan Supreme Court, in the case of *Basik v. General Motors Corp.,* 5 W.H.C. 1061, and the Federal District Court of Indiana in *Ferguson v. The Prophet Co.,* 6 W.H.C. 284, held that employees engaged in preparing food at a plant cafeteria are engaged in the production of goods for commerce. If these decisions are sound, and we believe they are, then the principles on which they rest would clearly entitle the employees in our case to the Act's protection.

In *McComb v. Factory Stores Co.* (N.D., Ohio), 8 W.H.C. 284, the Court held that employees of a concern operating canteens on premises of the Republic Steel Corporation were engaged in the "production of goods for commerce" and subject to the Act. At page 291 the Court stated: "It cannot be denied that in the final analysis, the canteens are a part of Republic's integrated system of efficient steel production." Here, too, the company town is a part of the appellant's integrated system of efficient sugar production.

The appellant also contends that if these housing maintenance employees are held to be engaged in the production of goods for commerce, they are then automatically exempt either under the § 13(a)(6) exemption or the §7(c) exemption. This, of course, by no means follows, and appellant cites no authority to support its contention. It is quite clear under the authorities we have cited in our discussion of the § 13(a)(6) and § 7(c) exemptions that by no stretch of the imagination can these housing maintenance employees be held to be engaged in agriculture or in the processing of sugar cane.

Appellant concedes (R. 225-255) that during a particular workweek many of these housing maintenance employees will frequently be engaged part of the week in the maintenance and repair of company houses and facilities connected therewith, and part of the week in the maintenance and repair of sugar processing and field equipment. Obviously, when these employees are

engaged in the latter activities, they are engaged "in the production of goods for commerce". It is well settled that in such a situation the employee is entitled to the benefits of the statute during the entire workweek. See Interpretative Bulletin No. 5, which reads in part as follows:

> "* * * In determining the applicability of the Act, the workweek is to be taken as the standard. Thus, if in any workweek an employee produces goods for commerce and also produces goods for local consumption or performs work otherwise outside the coverage of the Act, the employee is entitled to both the wage and hour benefits of the Act for all the time worked during that week. The proportion of the employee's time spent in each type of work is not material. An employee spending any part of a workweek producing goods for commerce will be considered on exactly the same basis as an employee engaged exclusively in producing goods for commerce during the workweek and the total number of hours which the employee works during the workweek at both types of work must be compensated for in accordance with the minimum wage and maximum hour standards of the Act.
>
> "* * * the burden of effecting segregation between workweeks and between different employees is upon the employer (see paragraph 5 of Interpretative Bulletin No. 1) and, as to any particular employee not accorded the benefits of the Act during any workweek it would be necessary, for example, to show that he did not prepare or handle materials used in the production of

goods for interstate commerce, nor clean machinery used in such production, nor aid in any way in the production of any goods for commerce * * *"

CONCLUSION.

If the broad social purposes of the Fair Labor Standards Act are to be achieved, the following conclusions are inescapable:

(1) That none of the appellees, with the exception of those engaged directly and exclusively in the cultivation, growing, and harvesting of sugar cane, are excluded from the Act's protection under the § 13(a)(6) exemption.

(2) That only those appellees engaged directly and exclusively in the processing of sugar cane in the mill are subject to the § 7(c) exemption, and only as to those workweeks when they are exclusively so engaged.

(3) That all the appellees, including those engaged in the maintenance and repair of the company houses and facilities connected therewith, are engaged "in the production of goods for commerce".

(4) That as to any workweeks in which any of the appellees perform any non-exempt work they are not exempt during such workweek from the provisions of the Act.

It is respectfully submitted that the decision of the trial Court, with the minor modifications herein requested, should be sustained.

Dated, San Francisco, California,
November 19, 1948.

GLADSTEIN, ANDERSEN, RESNER
& SAWYER,
RICHARD GLADSTEIN,
EWING SIBBETT,
Attorneys for Appellees
and Cross-Appellants.

(Appendices Follow.)

Appendices.

"(1) *Unloading.*—On the typical plantation, long lines of small cars loaded with cane stand outside the mill. These move slowly into the factory where the cane is pushed onto the mill conveyor by mechanical rakes.

"(2) *Grinding and pressing.*—The milling plant is composed of a crusher, and four three-roller presses in tandem, through which the crushed cane is passed for further juice extraction. The top roller of these presses is under hydraulic pressure of 75 to 100 tons per foot of length. The grinding rate varies from 25 to 100 tons of cane per hour at a single tandem mill. A double tandem mill will grind up to 150 tons per hour. One plantation mill has a capacity of 150 tons per hour. The average for all mills, however, is 55 tons per hour.

"(3) *Clarification.*—The pressed juice must be heated and limed. It then goes to a settling tank or tray-type clarifier. The clear juice is drawn off and goes to evaporators. The muddy settlings are then piped to filters. The Oliver Campbell Filter, now generally used, appeared in 1927. It consists of a drum covered with extremely fine holes constantly revolving in the settlings. A vacuum inside the drum draws juice through the holes but leaves mud and extraneous material deposited outside where it is scraped off the revolving drum and is then used as fertilizer.

"(4) *Evaporation.*—Excess liquid is removed from the juice by simply boiling it in quadruple evaporators. Exhaust steam from the main mill engines provides the heat, and all boiling is under vacuum to increase the drying efficiency.

"(5) *Crystallization.*—After boiling the thick sirup flows into tanks where it is kept slowly moving by mechanical paddles until it crystallizes. Since all operations in the milling process are mechanical up to this point, relatively little labor is required beyond the necessary to check on the progress of the cane sirup through the various processes. Such laborers as are needed, however, must be highly trained technicians.

"(6) *Drying.*—As soon as the proper degree of crystallization has developed, drying (or 'purging') is accomplished by the use of rapidly revolving metal cylinders (or 'centrifugals'). They are 30 to 40 inches in diameter and revolve at the rate of 900 to 1,400 revolutions per minute.

"(7) *Bagging.*—Automatic machinery drops the raw sugar into jute bags, weighs it, sews the bag, and delivers it to the conveyor.

"Much of the machinery, for example, steam pressure regulators, liming regulations, temperature regulators, juice level regulators, density indicators and the like, is automatic, requiring only occasional inspection and control.

"Electrification of the mills has proceeded rapidly. The use of new materials, such as stainless steel, has also aided efficiency."

Appendix B

"At the time the plaintiff company was organized, there was no established community having housing or other services or facilities for living in or near the area which it proposed to devote to the production and processing of sugar cane, to accommodate the employees whom the plaintiff needed for its operations. As a consequence, it became necessary for the plaintiff to construct houses, develop services and otherwise build up and establish facilities for permanent living on the plantation to serve the needs of the required number of employees and their families. The plaintiff did this over a period of years and established a perquisite system under which employees received housing, housing maintenance, water, fire wood and kerosene fuel, electricity, medical care, recreational facilities and various maintenance services, including garbage disposal and street cleaning, as a part of their regular compensation. The principal plantation community was established around the plantation buildings and yard area as shown on Exhibit 'A' and came to be known as the Village of Waialua * * *."

* * * * * * *

"At the present time the plaintiff owns 820 houses, all of which are located on the plantation. Most of them surround the plantation buildings and yard area and together with the business establishments of the community constitute the village of Waialua. Approximately 335 houses, however, are scattered over the plantation, some of this latter number being clus-

tered and forming field villages * * * On the basis of a census which was completed June 30, 1946, the 820 houses on the plantation were occupied by 3,373 persons, 2,952 of whom were employees and pensioners of the plaintiff, and their families. * * *

* * * * * * *

"Waialua village has all the physical and visual characteristics of an established community and is similar to a typical small village or town of a farming community center. The area is criss-crossed with government roads and also roads constructed and maintained by the plaintiff. This plantation community offers the usual services and typical commercial establishments to be found in any small town or village. It has ten (10) general stores, two (2) restaurants, two (2) fish markets, one (1) candy store, one (1) hardware store, one (1) clothing store, four (4) barber shops, one (1) beauty shop, one (1) photographic studio, two (2) automotive stations, two (2) motion picture theatres, one (1) bank, and other service establishments, all of which are independently owned and operated; a retail store with two (2) branches, an automotive service station and a hospital owned and operated by the plaintiff for both its employees and their families and non-plantation persons; and one (1) post office, one (1) public library, five (5) churches, one (1) intermediate and one (1) high school and one (1) day-care center operated as a part of the Territorial School System * * *"

At page 71 of Bulletin No. 687, we find the following quotation:

"It must be remembered that the whole plantation area, including the town, is owned by the plantation company, and although there are frequently many shops, such as drugstores, tailor shops, shoemakers, and the like, that are privately operated, they rent their sites from the plantation and can remain only as long as the plantation permits them to do so. Anyone on any part of the plantation is a trespasser unless he has the permission of the management to be there * * *"

Appendix C

"An understanding of the structural organization of the Hawaiian sugar industry begins with the agency system * * *

"The present agency system grew out of the trading concerns of the nineteenth century. These 'factors', as they are still called in Hawaii, dealt with whalers and trading ships, providing them with supplies and often acting as middlemen in the sale of such commodities as were then brought to Hawaii. During the latter half of the nineteenth century, the collapse of the whaling industry, combined with a sharp decline in Hawaiian exports to California, diverted the capital of the factors to the plantations. As late as 1860 Hawaiian planters generally arranged for transporting and selling their sugar through captains of trading ships. But the rapid expansion of the sugar industry after the adoption of the reciprocal trade agreement with the United States in 1876 made the commercial functions of the plantations so important and pressing that the factors were encouraged to concentrate upon them. The extreme isolation of Hawaii and the difficulties of maintaining contacts between the plantation management and the distant markets of the American mainland also tended in this direction. In time, five factors came to handle practically everything the plantations bought or sold.

"Gradually they also took over the financing of the industry, in fact, the mobilization and control of cap-

ital for the sugar industry has become their major function.

"Under the existing conditions, this appeared to be a normal development. Plantation agriculture is designed for the most effective production of sugar within the limitations which the land, labor, and capital of Hawaii impose, but it is not organized to meet the problem of merchandising with the wide orientation relative to world markets which that implies.

"A plantation involves a large outlay of capital, including long-term investment in buildings, equipment, and labor, as well as a considerable risk of crop and market fluctuations. Yet the individual planter seldom possessed either the business acumen to handle these matters or the capital to carry him through difficult times. By putting his purchasing, market, and financing problems into the hands of a concern specializing in these fields, the planter could focus upon his primary problem, that of maximizing production.

"*The long-run result of this policy, however, was to deprive the plantation of its independence and to develop a highly integrated system which centered authority in the factors.* The simple, independent plantation under an owner-manager persisted until 1880. About this time, under the guidance of the factors, there was a marked movement toward incorporation in order to provide a better mobilization of capital and a larger scale of production. By 1900, virtually all of the capital in the Hawaiian sugar industry was in corporate plantations. This period also

witnessed a sharp rise in the authority of the factors, together with a trend toward consolidation on the part of both factors and plantations. (Emphasis added.)

"In the period of financial stringency of the early nineties, the weaker plantations were faced with a choice of going into bankruptcy or yielding control to the factor to which they were indebted. Subsequent depressions accelerated this process. The factors were quick to take advantage of the reduction in costs which could be obtained by combining adjacent plantations into larger units. In 1883 there were 90 plantations which produced 57,053 tons of sugar. *In 1938 there were only 38 plantations but they produced 941,293 tons of sugar.* Meanwhile, the number of factors diminished to 5 * * * (Emphasis added.)

* * * * * * *

"The individual owner-managed plantation of the early eighties has thus been displaced by a corporate mass-production plantation controlled by one or another of the central agencies in Honolulu. It is managed by a trained agricultural executive with a staff of technical experts, all hired and directed by the controlling agency."

Appendix D

"Another factor in our decision is the inclusion in Section 3(f) of commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, 46 Stat. 1550, 12 U.S.C.A. § 1141j(g). The said Section 15(g) provides that the term 'agricultural commodity' includes crude gum from a living tree, and certain specified products as processed by the original producer of the crude gum, such as turpentine and resin. It seems apparent to us that the inclusion of the Section 15(g) in Section 3(f) of the Act here in question is recognition of the fact that such operations as the production of turpentine from oleoresin, or of raw sugar from sugar cane, would not be included in the definition of agriculture unless specifically included. There is no specific inclusion for the processing of sugar cane into sugar in Section 3(f) as there is in Section 7(c). It is apparent from the specific inclusion of this processing in Section 7(c) that Congress was cognizant of it and included it in certain exemptions where it was thought desirable.

* * * * * * *

"Furthermore, it would seem that the employees involved in this case would not fall within the reason for the exemption which was accorded to agricultural employees. The Act was drawn not to include the latter because agricultural labor was not subject to the usual evils of sweat-shop conditions of long hours indoors at low wages. Also any attempt to regulate agricul-

tural wages would present a difficult problem since a substantial part of the agricultural workers' income must of necessity be for board and room. The employees in the instant case are typical factory workers or laborers engaged in maintaining industrial facilities. The exemption of agricultural labor from the operation of the Act is not admissible as an argument to exempt labor in an industry from its operation. Fleming v. Hawkeye Pearl Button Co., supra; cf. North Whittier Heights Citrus Ass'n. v. National Labor Relations Board, 9 Cir., 1940, 109 F. (2d) 76, 80, 81. For these reasons we reject the appellants' contention that the employees here involved are engaged in agriculture within the meaning of Section 13(a)(6) and Section 3(f).

* * * * * * *

"It is our conclusion that Section 6 of the Fair Labor Standards Act applies to the employees here in question and that they are entitled to the minimum wages provided in the statute. Among the appellants' employees only those engaged in planting, cultivating and harvesting of the sugar cane are exempt."